

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3471 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

=====

1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO  
1 to 5 : NO

-----

VEDVA VAGRI OGHA BIJAL

Versus

STATE OF GUJARAT

-----

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR MA BUKHARI AGP for Respondent No. 1, 2, 3

-----

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 29/12/1999

ORAL JUDGEMENT

District Magistrate, Bhavnagar passed an Order on March 30, 1999 in exercise of powers u/s. 3 (2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the PASA Act'] detaining Vedva Vaghri Ogha Bijal - the petitioner herein, under

the provisions of the PASA Act.

2. The grounds of detention indicate that the detaining authority found that the activities of the detenu are illegal, anti-social and detrimental to public order. For recording his subjective satisfaction, the authority took into consideration six offences registered against the detenu under the Bombay Prohibition Act. The authority also took into consideration the statements of four anonymous witnesses which reflected involvement of the detenu in the activities of bootlegging and use of force and intimidation for the purpose. The authority, therefore, felt that the identity of the witnesses, if disclosed, may cause danger to the person and property of the witnesses at the hands of the detenu. The authority also recorded that the detenu was required to be immediately prevented from pursuing his illegal and anti-social activities. The authority, therefore, felt that resorting to less drastic remedies under other provisions of law may not prove to be as efficacious as detention under the PASA Act.

3. The detenu challenges the order of detention on various grounds. Main ground being that there is improper exercise of powers u/s. 9 (2) of the PASA Act. This has resulted into infringement of the right of the detenu of making an effective representation contemplated under Article 22 (5) of the Constitution of India, and therefore, the detention would be vitiated and may be quashed.

4. Mrs. Patel, learned advocate appearing for the petitioner has restricted her arguments to the above grounds alone. She has submitted that the statements of anonymous witnesses were recorded on 11th March, 1999. The same were verified by Deputy Superintendent of Police, Palitana on 11th and 12th March, 1999. The detaining authority has verified the statements on 30th March, 1999 and the order was passed on that very day. The detaining authority did not have sufficient time to consider the material and the need for exercise of powers u/s. 9 (2). The subjective satisfaction recorded by the authority cannot be said to be genuine. The authority ought to have considered the right of the detenu against the 'public interest' for which the privilege is claimed. That has not been done, therefore, the petition may be allowed. She has relied on the decision in the case of Kalidas Chandubhai Kahar v. State of Gujarat & Ors., [1993 (2) GLR 1659].

5. Mr. Bukhari, learned AGP has opposed this

petition.

6. It is not in dispute that the statements were recorded on 11th March, 1999 and the same were verified by the detaining authority on 30th March, 1999 by putting a one word verification 'verified'. The detaining authority has not filed any affidavit-in-reply in this regard. The powers u/s. 9 (2) are to be exercised in 'public interest'. Non-disclosure of the identity of witnesses in exercise of this power will have a direct bearing on the right of the detenu of making an effective representation, and therefore, the authority has to be cautious on this aspect while exercising the powers u/s. 9 (2) of the Act. The authority has to weigh the right of the detenu on the one hand and the public interest on the other and then strike a balance between the two. For arriving at satisfaction for the need for exercising the powers u/s. 9 (2) of the PASA Act, the authority must have some contemporaneous material to enable it to assess the background, the antecedents, temperament, etc., of the detenu and thereafter arrive at a decision on this point. In the instant case, there was no time for the authority to look for this material and there appears not any material to indicate that such aspects were considered by the detaining authority, and therefore, it cannot be said that the satisfaction recorded by the authority for exercise of powers u/s. 9 (2) of the PASA Act is genuine. In this regard, decision in the case of Kalidas Chandubhai Kahar [Supra] and in the case of Chandrakant N. Patel v. State of Gujarat & Ors. [1994 (1) GLR 761] can profitably be used.

7. In view of above discussion, the petition deserves to be allowed, and the same is allowed. Order passed by District Magistrate, Bhavnagar on 30th March, 1999 in respect of Vedva Vaghri Ogha Bijal is quashed and set-aside. The petitioner-detenu be set at liberty forthwith, if not required in any other case. Rule is made absolute with no order as to costs.

Sd/-

[A.L Dave, J.]

\*\*\*\*

Prakash\*